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Attorneys for Defendant  
HOME DEPOT U.S.A., INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOSE GUTIERREZ, individually  
and on behalf of All Others Similarly  
Situated,

Plaintiff,

v.

THE HOME DEPO U.S.A., INC.,

Defendant.

Case No. CV09-3418R (MANx)

**NOTICE OF MOTION AND  
MOTION OF HOME DEPOT U.S.A.,  
INC. TO DISMISS COMPLAINT**

Date: September 21, 2009  
Time: 10:00 a.m.  
Place: Courtroom 8

[Courtroom of the Hon. Manuel L. Real]

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:


2 PLEASE TAKE NOTICE that on September 21, 2009, at 10:00 a.m., or as  
3 soon thereafter as the matter may be heard, in Courtroom 8 of the above-entitled  
4 Court, located at 312 N. Spring Street, Los Angeles, California 90012, defendant  
5 The Home Depot USA, Inc. ("Home Depot") will and hereby does move the Court,  
6 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an order  
7 dismissing the complaint of plaintiff Jose Gutierrez, and each of the claims for  
8 relief therein, for failure to state a claim on which relief can be granted.

9 This Motion is and will be based on this Notice of Motion and Motion, the  
10 accompanying Memorandum of Points and Authorities and Request for Judicial  
11 Notice, all records presently on file with this Court, all other matters of which this  
12 Court shall or may take judicial notice, any reply Home Depot may make, and such  
13 additional evidence and argument as may be presented to the Court before or during  
14 the hearing on this Motion.

15  
16 Dated: July 17, 2009

BURKE, WILLIAMS & SORENSEN,  
LLP

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19 By:

  
ALLAN E. CERAN  
Attorneys for Defendant  
HOME DEPOT U.S.A., INC.

**PROOF OF SERVICE**

I, Mildred King, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. On **July 17, 2009**, I served a copy of the within document(s):

**NOTICE OF MOTION AND MOTION OF HOME  
DEPOT U.S.A., INC. TO DISMISS COMPLAINT**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a \_\_\_\_\_ agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the

1 U.S. Postal Service on that same day with postage thereon fully prepaid in the  
2 ordinary course of business. I am aware that on motion of the party served, service  
3 is presumed invalid if postal cancellation date or postage meter date is more than  
4 one day after date of deposit for mailing in affidavit.

5 I declare that I am employed in the office of a member of the bar of this  
6 Court at whose direction the service was made.

7 Executed on **July 17, 2009**, at Los Angeles, California.

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10 Mildred King  
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